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16 Attorneys for Plaintiffs

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19

20 JOHN ARMSTRONG, et al.,
21 Plaintiffs,
22
23 v.
24 GAVIN NEWSOM, et al.,
25 Defendants.

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Corrections and Rehabilitation

Case No. C94 2307 CW

JOINT CASE STATUS STATEMENT

Judge: Hon. Claudia Wilken

1 The parties submit this Joint Case Status Statement pursuant to the Stipulation and
 2 Order entered March 28, 2011 (ECF No. 1868), which provides that “[t]he parties will file
 3 periodic joint statements describing the status of the litigation” every other month,
 4 beginning on May 16, 2011.

5 **CURRENT ISSUES¹**

6 **A. Allegations of Abuse, Retaliation, and Violence by CDCR Staff Against Class Members**

8 **1. Plaintiffs’ Statement**

9 **a. RJD and Five Prisons Orders**

10 Plaintiffs continue to monitor remedial efforts the Court found to be necessary in
 11 order to prevent further violations of the ARP and class members’ ADA rights at six
 12 prisons, including changes to the staff misconduct investigation process and
 13 implementation of Audio Visual Surveillance Systems that include body-worn camera
 14 technology. *See* ECF Nos. 3059, 3060, 3217 and 3218. Party agreements regarding Court
 15 ordered changes are found in Defendants’ RJD and Five Prisons Remedial Plans (“Plans”).
 16 *See* ECF No. 3393, Exs. A and B.

17 Plaintiffs have issued multiple quarterly reports and have identified scores of cases
 18 that show failures by Defendants to conduct complete and unbiased investigations and
 19 impose appropriate and consistent discipline. Most recently, Plaintiffs’ counsel reported
 20 on investigation failures evident through a review of all cases produced from one quarter
 21 from Kern Valley State Prison. *See* December 10, 2024 Letter from Penny Godbold,
 22 without attachments, attached hereto as **Exhibit A**. Defendants are also failing to comply
 23 with other provisions of the Remedial Plans that impact class members statewide,
 24 including failing to meet deadlines for completing investigations and to appropriately route
 25 allegations of misconduct to the appropriate investigators. Plaintiffs’ counsel have
 26 outlined additional reforms that are necessary to bring Defendants’ accountability system

27 _____
 28 ¹ Statements are joint unless otherwise delineated as either *Plaintiffs’ Statement* or
Defendants’ Statement.

1 into compliance and to avoid future litigation. *See* ECF No. 3592, Ex. A. Defendants
 2 responded that they will implement some, but not all, of the reforms outlined in ECF
 3 No. 3592, Exhibit A. The parties are actively engaged in negotiations to reach agreement
 4 regarding changes that are necessary to the system to bring it in to compliance with Court
 5 Ordered Remedial Plans.

6 CDCR is a statewide system. Violations of the ADA and ARP found thus far at six
 7 prisons exist system-wide and Plaintiffs are committed to bringing such evidence before
 8 the Court until all class members are protected. *See* ECF No. 3592, Ex. A at 7-8.

9 **b. False, Retaliatory and Discriminatory RVRs**

10 Despite significant progress made towards Court-ordered improvements to the staff
 11 misconduct investigation and disciplinary system, the endemic use of false and retaliatory
 12 RVRs by staff to cover up disability-related misconduct and/or to retaliate against class
 13 members who report misconduct remains a problem. *See* ECF No. 3296 at 9. Steps taken
 14 thus far by Defendants to eliminate the problem have not gone far enough, and Plaintiffs’
 15 counsel continues to identify class members who have received false, retaliatory,
 16 discriminatory or otherwise inappropriate RVRs. *See* ECF No. 3606, Exs. A and B. The
 17 use of RVRs to retaliate against and discourage the filing of staff misconduct complaints
 18 will persist unless Defendants take action to identify and root out problems through
 19 meaningful reforms to the RVR process. Plaintiffs are hopeful that the parties can agree to
 20 resolve problems and that additional court intervention will not be necessary.

21 **2. Defendants’ Statement**

22 **a. RJD and Five Prisons Orders**

23 CDCR has dramatically overhauled its processes to ensure unbiased and complete
 24 investigations and, although not required by the Court’s orders, Defendants have deployed
 25 statewide processes that restructure CDCR’s staff misconduct allegation, screening,
 26 referral, investigative, and disciplinary processes. As the Court has noted, “[t]hese agreed-
 27 upon measures constitute substantial improvements that will go a long way to bringing
 28 Defendants into compliance with the ARP and ADA at the six prisons.” ECF No. 3356 at

1 2. The Court found, the “implementation of these [] remedial measures is likely to have a
2 positive impact on...the overall reliability of the outcomes of investigations.” *Id.* at 15.
3 Despite the tremendous efforts and resources directed toward improving the staff
4 misconduct investigation and discipline processes, modifications are necessary to ensure
5 sustainability. CDCR shared its initial modification proposal with the Court Expert and
6 Plaintiffs. The parties and Court Expert have met extensively to discuss these proposals,
7 Plaintiffs’ responses, and to identify areas of agreement. CDCR will continue to discuss
8 needed modifications to the current processes to ensure their sustainability and looks
9 forward to proactively developing modifications without protracted delay.

10 **b. Demands for RVR Reform**

11 Defendants have made significant progress and commitments to address Plaintiffs’
12 demands that CDCR address the alleged practice of issuing false and retaliatory Rules
13 Violations Reports (RVRs) to class members, as detailed in previously filed statements.
14 *See* ECF Nos. 3412 at 14-16, 3526 at 7-8. CDCR continues to address these issues to the
15 extent they are specifically related to class-member accommodation, alleged
16 discrimination, or retaliation and to the extent it is required to do so under the remedial
17 plans, the ADA, or prior court orders. Plaintiffs may disagree with the investigation or
18 discipline imposed, but that does not mean that the RVR was false or retaliatory.
19 Plaintiffs’ general complaints about the RVR process, unrelated to class-member
20 accommodations, are not properly raised in this case.

21 **B. Court Expert Investigation Into SATF**

22 **1. Plaintiffs’ Statement**

23 In November 2021, this Court ordered the Court Expert to investigate the treatment
24 of people with disabilities at the California Substance Abuse Treatment Facility and State
25 Prison, Corcoran (“SATF”). ECF No. 3338. In December 2022, the Court Expert filed a
26 67-page report, finding a substantial breakdown in the disability accommodation process at
27 SATF. ECF No. 3446 at 4. The Court ordered corrective action, including additional
28 analysis and reporting by the Court Expert and the development of policies and procedures

1 by CDCR. *See* ECF No. 3467; ECF No. 3538. On October 16, 2024, the parties filed a
2 joint status statement regarding compliance with the Court’s corrective action order, and
3 brought several disputed issues to the Court for resolution. *See* ECF No. 3630 (Joint
4 Status Statement); ECF No. 3630-30 (Plaintiffs’ Proposed Order). The Court issued an
5 order on November 8, 2024, finding that Items 1, 2, 3 were resolved. ECF No. 3639 at 1-
6 2. Regarding Item 12, the Court held the parties’ procedural dispute regarding conferring
7 about the tablet contract was resolved, and ordered a further process for negotiating
8 disputes after the contract is awarded; and approved the parties’ agreed-upon process for
9 meeting and conferring regarding in-cell videophone access on tablets for class members
10 who communicate using sign language. *Id.* at 2-4. Regarding Item 14, the Court approved
11 the parties’ agreed-upon plan for the implementation and monitoring of the final RVR
12 policy. *Id.* at 4. For the remaining items in the joint statement, the Court ordered the
13 Court Expert to file recommendations as to their resolution no later than January 10, 2025,
14 and set a briefing schedule for the parties. *Id.*

15 A detailed account of systemic concerns with the accommodation of *Armstrong*
16 class member at SATF appears in the parties’ last joint case status statement. *See* ECF
17 No. 3622 at 5-11. In light of these concerns, Plaintiffs eagerly await the Court Expert’s
18 forthcoming report and recommendations on staffing and sustainability and hope it will
19 result in the allocation of sufficient expertise and resources, and development of robust
20 systems, necessary to comply with the *Armstrong* Remedial Plan and Americans with
21 Disabilities Act.

22 2. Defendants’ Statement

23 The Court Expert’s second report concerning the treatment of people with
24 disabilities at SATF recognized the numerous proactive measures implemented at SATF to
25 further respond to the needs of incarcerated people with disabilities. ECF No. 3500. The
26 report demonstrates that the coordinated efforts between CDCR and California
27 Correctional Health Care Services (CCHCS), with the Court Expert’s guidance and with
28 input from Plaintiffs, are working to effectively respond to the issues raised by the Court

1 and addressed by the Court Expert following his initial investigation. In response to this
2 Court's order, the Court Expert issued a November 28, 2023, Addendum to Second Report
3 Regarding the Treatment of People with Disabilities at SATF. ECF Nos. 3500, 3521,
4 3529. Based on the Court Expert's recommendations in this Addendum, the parties
5 entered a stipulation addressing multiple issues. ECF Nos. 3533, 3538. Following 11
6 months of negotiations, policies and procedures were developed to address the Court
7 Expert's key concerns and ensure long-term compliance with the ADA, the *Armstrong*
8 Remedial Plan, and this Court's orders. On October 16, 2024, the parties filed a joint
9 statement providing a status update on all of the stipulation items and reporting on all
10 unresolved issues. *See* ECF No. 3630. The Court issued an order on November 8, 2024,
11 finding that Items 1, 2, 3, 12, and 14 were resolved. ECF No. 3639. In accordance with
12 the Court's order, the Court Expert filed his recommendations as to their resolution on
13 January 10, 2025, and the parties will respond to the recommendations under the Court's
14 briefing schedule. *Id.*

15 **C. Accommodations for Deaf and Hard-of-Hearing Class Members**

16 **1. Plaintiffs' Statement**

17 Despite negotiations to resolve a number of issues facing the deaf and hard of
18 hearing population following the Court's December 7, 2023 order, *see* Dkt. No. 3538,
19 several disputes remain, *see* Dkt. No. 3639. In addition to the disputes currently before the
20 Court Expert, Plaintiffs' counsel remain concerned about the significant shortage of sign
21 language interpreters, described in the last Joint Status Statement, *see* Dkt. No. 3641 at 8,
22 which has worsened in the past two years as several of CDCR's staff sign language
23 interpreters have left their positions and have not been replaced. The parties also have
24 disputes regarding access to real-time captioning services that fall outside the scope of the
25 SATF Stipulation. *See id.* These accommodations play a crucial role in ensuring that deaf
26 and hard of hearing class members have equal access to the programming central to their
27 ability to rehabilitate, exit the carceral system, and successfully reintegrate into their
28 communities. *See id.*

1 Unfortunately, the parties have made no progress to resolve these disputes since the
2 last Joint Status Statement. Plaintiffs have sought multiple times to schedule a meeting of
3 the Deaf and Hard of Hearing Workgroup with Defendants to discuss these issues and
4 others that we have yet to bring to the attention of the Court.

5 Plaintiffs believe these meetings can allow the parties to resolve disputes to the
6 benefit of class members. For example, Workgroup discussions yielded meaningful
7 improvements in access to sign language interpreters during medical encounters.
8 Conversely, when Plaintiffs have raised issues through advocacy letters, Defendants often
9 provide a delayed and inadequate response or no response at all. *See, e.g.*, Dkt. No. 3622
10 at 9. Plaintiffs remain committed to the Workgroup process and hopeful that Defendants
11 will agree to continue to work collaboratively to resolve class members' concerns.

12 Plaintiffs submitted our meeting agenda on December 16, 2024 and Defendants
13 responded in writing on January 13, 2025. Additionally, there is an outstanding request for
14 a meeting the week of February 18. We hope that Defendants will agree to a meeting of
15 the Workgroup.

16 **2. Defendants' Statement**

17 As detailed in the October 16, 2024, joint statement regarding SATF stipulation
18 filed with the Court, incorporated by reference here, Defendants have taken extraordinary
19 measures to accommodate this population. *See* ECF Nos. 3631, 3631-1 to 3631-10. These
20 efforts are ongoing to ensure accommodation of this population. There are areas of
21 disagreement, as Plaintiffs note above, primarily involving the scope of accommodations
22 for hard-of-hearing class members. The Court Expert filed his recommendations on these
23 outstanding areas of dispute on January 10, 2025, and Defendants will provide their
24 response under the court-ordered briefing schedule. Defendants remain committed to
25 providing deaf and hard-of-hearing class members equal access to programs, services, and
26 activities in accordance with the ADA, the remedial plans, and this Court's orders.

27 Defendants take issue with Plaintiffs' characterization above of the workgroup and
28 related correspondence. Defendants advised Plaintiffs that CDCR looked forward to

1 receiving Plaintiffs' proposed workgroup agenda, and that, upon receipt, Defendants
2 would review the agenda, respond in writing as appropriate, and then determine whether
3 the parties should meet. Defendants believe this is a reasonable and efficient approach,
4 particularly considering the areas of disagreement still awaiting court resolution, the
5 intervening holidays, and the inherent difficulty of convening a large group meeting.
6 Moreover, there are several other meetings in January already scheduled, where the parties
7 will have the opportunity to discuss key issues related to the deaf and hard-of-hearing
8 population.

9 Meanwhile, Defendants continue to be mindful of their obligation to provide sign-
10 language interpretation services for deaf class members whose primary method of
11 communication is American Sign Language (ASL). As previously reported, CDCR has
12 submitted requests to increase the salary of certain positions to attract qualified interpreters
13 but there remains an industry-wide shortage of interpreters; the impact of this shortage is
14 compounded by the challenges associated with a correctional setting irrespective of the
15 associated earning potential. CDCR will continue to work diligently to fill these essential
16 positions while supplementing the needs of deaf class members with sign-language
17 interpreters through three fully implemented service contracts.

18 **D. Accommodations for Blind and Low Vision Class Members**

19 **1. Plaintiffs' Statement**

20 Plaintiffs' counsel continue to raise concerns with the implementation of
21 Defendants' new visual accommodations program. Specifically, Plaintiffs have
22 documented that class members are being documented as "refusing" vision assessments
23 when they report that they have not in fact refused or that they were not adequately
24 informed about the purpose of the assessment before refusing; that their writing needs are
25 not being thoroughly evaluated resulting in class members being forced to rely on others to
26 write; that they are experiencing unnecessary delays in receiving recommended devices;
27 and that they are experiencing long wait times for vision assessments. *See* Letter from
28 Tania Amarillas and Rita Lomio (August 7, 2024), attached as Exhibit H to ECF No. 3622.

1 Plaintiffs are also concerned that Defendants still have not produced proof of
2 practice to show that they are, in fact, issuing recommended assistive devices—and
3 providing training on these devices—on a timely basis. Plaintiffs have repeatedly
4 requested this proof of practice to no avail. As of December 1, 2024, the monthly “DPP
5 roster” that Defendants produce to Plaintiffs’ counsel, which identifies disability
6 accommodations that have been issued to each *Armstrong* class member statewide, does
7 not document whether a class member has been issued recommended vision assistive
8 devices, even though it records the issuance of other types of accommodations.

9 Defendants have maintained that Plaintiffs’ counsel may request this information
10 from CDCR institutions before and after *Armstrong* monitoring tours, but these tours occur
11 only a few times per year; Plaintiffs’ counsel must monitor more than just a few times per
12 year whether blind and low-vision *Armstrong* class members have been issued assistive
13 devices and received training. Defendants have also encouraged Plaintiffs’ counsel to ask
14 *Armstrong* class members for this information. But by virtue of Defendants failing to issue
15 reading and writing assistive devices to blind and low-vision class members, these class
16 members often cannot reach out independently to Plaintiffs’ counsel. Furthermore, it is
17 Defendants’ responsibility—not the *Armstrong* class’s responsibility—to provide
18 Plaintiffs’ counsel with “reasonable access to information sufficient to monitor defendants’
19 compliance with the guidelines, plans, policies and procedures that have been approved by
20 the Court.” Dkt. 158 at 5.

21 Plaintiffs also remain concerned about Defendants’ failure to accommodate people
22 with monocular vision, who have a narrower field of vision and severely limited depth
23 perception, especially at shorter distances, and who may face safety risks in a prison
24 environment. *See* Joint Case Status Statement, ECF No. 3606 at 20-21. Plaintiffs continue
25 to encounter class members who have been denied accommodations because their DPP
26 vision code was removed by CDCR because they have monocular vision. Plaintiffs
27 continue to assert that CDCR must develop and enforce a policy that ensures that people
28 with monocular vision are not categorically excluded from accommodation and are

1 affirmatively assessed to determine whether they need visual accommodations. Plaintiffs
2 note that, even after the date of issuance of a new CCHCS policy regarding, in part, visual
3 accommodations for people with monocular vision, Plaintiffs have continued to encounter
4 and report to Defendants instances of class members with monocular vision being
5 categorically denied accommodations on the basis of not having a DPP code.

6 **2. Defendants' Statement**

7 Defendants have addressed Plaintiffs' concerns regarding class members' refusals
8 to participate in vision specialist assessments in the October 16, 2024, joint statement
9 regarding SATF stipulation filed with the Court, incorporated by reference here. *See* ECF
10 No. 3630 at 7-8; and see ECF No. 3631-8 at ¶¶ 9-11. Although Plaintiffs assert that class
11 members' writing needs are not being thoroughly evaluated resulting in class members
12 being forced to rely on others to write, Defendants dispute this contention and CDCR's
13 Visual Accommodations for Incarcerated Persons With a Vision Code policy provides a
14 process for a class member to request an alternate accommodation if the assistive device(s)
15 issued to them are insufficient to address their needs. *See* ECF No. 3615 at 40 and 42.

16 Defendants have been diligently working to provide vision-impaired class members
17 individualized vision assessments and the assistive devices recommended by the vision
18 specialist following assessment, including contracting with additional vision specialists to
19 expand assessment availability. Since December 7, 2023, Defendants have offered
20 individualized assessment by a vision specialist to 249 vision-impaired class members,
21 prioritizing evaluation of class members who had a Board of Parole Hearings hearing in
22 2024, as required by the Court's Order for Further Parole-Related Remedial Plan (*see* ECF
23 No. 3584). Defendants continue to prioritize relevant class members with a Board hearing
24 in 2025. On November 4, 2024, Defendants also issued an Interim Access to Assistive
25 Devices for Incarcerated Persons with a Vision Impairment policy (a true and correct copy
26 of which is attached as **Exhibit B**) to ensure that incarcerated people with a vision code,
27 who are either awaiting their individualized assessment by the vision specialist or are
28 pending receipt of the recommended device following assessment, are able to have access

1 to the assistive devices they need through their ADA office. As indicated in the joint
2 statement regarding the SATF stipulation, reported delays in the issuance of the
3 recommended assistive devices raised in Plaintiffs' advocacy correspondence will be
4 addressed through the regular advocacy process. *See* ECF No. 3630 at 8. Defendants
5 dispute that any reported delays were unreasonable given the totality of the circumstances.

6 Although Plaintiffs assert that they are entitled to a "proof of practice" regarding
7 Defendants' issuance and training on the devices recommended by the vision specialist
8 (*see supra*), Defendants dispute that Plaintiffs' requested "proof of practice" constitutes
9 "reasonable access to information sufficient to monitor defendants' compliance with the
10 guidelines, plans, policies and procedures that have been approved by the Court." ECF
11 No. 158 at 5. Plaintiffs' requested "proof of practice" consists of production of (a) "all
12 post-assessment documentation by CCHCS/CDCR of Defendants' approval or denial,
13 purchase, and issuance of specific assistive devices" for each class member who undergoes
14 an individualized assessment no later than 14 days following the date of such
15 documentation; (b) "all documentation setting forth an approved plan or schedule for the
16 class member's training on assistive devices" for each class member who undergoes an
17 individualized assessment no later than 14 days following approval of the training; and (c)
18 "all CDCR- or CCHCS-generated documentation—including documentation generated by
19 a third-party contractor—arising from assistive device training sessions" for each class
20 member who undergoes an individualized assessment no later than 14 days following the
21 date of each training session. *See* Letter from Jacob Hutt (April 5, 2024), true and correct
22 copy of which is attached as **Exhibit C**. As explained in Defendants' third response to
23 Plaintiffs' request for information regarding individualized assessments of blind and low-
24 vision class members (true and correct copy of which, excluding attachments, is attached
25 as **Exhibit D**), Plaintiffs' requests are unduly burdensome because CDCR does not track
26 the requested information in the regular course of business in a centralized location
27 statewide and the information requested is already in Plaintiffs' possession because CDC
28 Form(s) 128-B are issued to each class member upon the issuance of and training on the

1 recommended assistive device(s). *See* Exhibit D at 2-3.

2 Finally, although Plaintiffs “continue to assert that CDCR must develop and enforce
3 a policy that ensures that people with monocular vision are not categorically excluded
4 from accommodation and are affirmatively assessed to determine whether they need visual
5 accommodations” (*see supra*), Defendants’ newly-enacted policy already ensures that
6 people with monocular vision are not categorically excluded from accommodation. (*See*
7 ECF No. 3615 at 37 (providing for case-by-case consideration of requests for visual
8 accommodations from incarcerated persons who do not have a vision code). Defendants
9 disagree that either the ADA or the remedial plan requires affirmative assessment of each
10 incarcerated person with monocular vision, regardless of whether they are experiencing
11 substantial limitations in any of their major life activities. If an incarcerated person with
12 monocular vision reports to their medical provider that their vision is interfering with their
13 ability to access CDCR programs, services or activities, that person may be referred to a
14 specialist to address their concerns or any accommodation needs. *See* CCHCS’s
15 memorandum titled “Confirmation of DPV/DNV Disability Codes and Accommodations”
16 dated April 17, 2024, ECF No. 3641 at 29-31.

17 **E. Problems Regarding Access to Assignments for Class Members**

18 The program-access workgroup continues to periodically meet to discuss credit
19 earning, the assignment process, and disparities in the program-access assignment data in
20 response to Plaintiffs’ allegations of disability-related discrimination. *See* ECF No. 2680
21 at 1314. Plaintiffs’ counsel seeks to move forward with agreement on a standard for
22 evaluating program assignment discrimination and continues to report on disparities in
23 assignments that are identified in monitoring work on individual institutions and programs.
24 For example, Plaintiffs continue to report on disparities in assignment rates for higher
25 paying and higher status jobs, like Prison Industries Association jobs, which class
26 members are assigned to at lower rates.

27 ///

28 ///

1 **F. Joint Monitoring Tool**

2 The parties remain committed to developing a strong and effective joint monitoring
3 tool. The parties continue to convene small work groups, confer with the Court Expert
4 about informal briefing, and continue to meet to discuss and resolve the few remaining
5 disputes between the parties such as a format for scoring and reporting compliance. The
6 parties continue to work towards a collaborative solution for scoring and reporting.

7 **G. ADA Structural Barriers, Emergency Evacuation Procedures, and Master**
8 **Planning Process**

9 The parties continue to engage in the Master Planning Process aimed at ensuring
10 that CDCR prisons are accessible to people with disabilities in compliance with the
11 ADA. During the last few months, the parties have exchanged position statements on
12 disputed issues and are working with the Court Expert to try to narrow and resolve the
13 disputes. These meetings have been successful and are ongoing. The parties met most
14 recently with the Court expert on December 11, 2024, to discuss the process for
15 obtaining interim accommodations while longer-term, larger, Master Planning
16 construction projects to improve accessibility are in the works. As noted in prior
17 statements, the parties have agreed on a new process for sharing information and plans
18 related to Master Planning projects, for having Plaintiffs' expert provide comments on
19 plans, and for touring completed projects. Defendants recently shared initial construction
20 documents, including detailed plans for accessibility improvements, with Plaintiffs' expert
21 who has reviewed the first ten plan sets. The parties also toured CMF with Plaintiffs'
22 expert on December 9, 2024. Plaintiffs also continue to have a number of outstanding
23 information requests regarding the Master Planning process that the parties are working

24 ///

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28 ///

1 their way through with assistance from the Court Expert.

2
3 Respectfully submitted,
4 DATED: January 15, 2025 ROSEN BIEN GALVAN & GRUNFELD LLP
5 By: /s/ Penny Godbold
6 Penny Godbold
7 Attorneys for Plaintiffs
8

9 DATED: January 15, 2025 ROB BONTA
10 Attorney General of the State of California
11 By: /s/Trace O. Maiorino
12 Trace O. Maiorino
13 Deputy Attorney General
14 Attorneys for Defendants

15 **FILER'S ATTESTATION**

16 As required by Local Rule 5-1, I, Penny Godbold, attest that I obtained concurrence
17 in the filing of this document from Deputy Attorney General Trace O. Maiorino, and that I
18 have maintained records to support this concurrence.

19
20 DATED: January 15, 2025 /s/Penny Godbold
21 Penny Godbold
22
23
24
25
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27
28

EXHIBIT A



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December 10, 2024

VIA ELECTRONIC MAIL ONLY

Jennifer Neill
Tamiya Davis
CDCR Office of Legal Affairs
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Tamiya.Davis@cdcr.ca.gov

Re: *Armstrong v. Newsom*: Additional Evidence of Accountability System
Failures in Review of All Cases from KVSP Q3 2024
Our File No. 0581-03

Dear Jenn and Tamiya:

We write as part of the parties' ongoing negotiations to ensure Defendants' compliance with the Court's orders and Remedial Plan requirements regarding conducting complete and unbiased investigations and issuing appropriate discipline in response to allegations of staff misconduct.

In April 2024, Plaintiffs analyzed all 133 staff misconduct allegation investigations produced for LAC in the most recent prior quarter. *See* PG-Defs, Additional Evidence of Accountability System Failures in Review of All Cases from LAC Q4 2023 (April 24, 2024). Plaintiffs' analysis found that CDCR's accountability system failed in more than 55% of cases.

The problems outlined in that letter are not limited to LAC, as Plaintiffs have repeatedly raised systemic issues with the quality of Defendants' investigations and accountability decision making in quarterly reports. Investigators fail to collect relevant evidence, including video evidence, necessary to evaluate allegations, which makes it impossible to determine whether misconduct occurred. Further, even when misconduct is identified, CDCR regularly fails to hold staff accountable.

Plaintiffs now provide another comprehensive review of staff misconduct allegations, this time for Kern Valley State Prison ("KVSP"). Attached to this letter is

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Plaintiffs’ analysis of all 57 cases produced for KVSP in the most recent quarter, Q3 2024.

Plaintiffs found that in nearly 50 percent of cases, Defendants’ accountability system failed. The largest category of investigation failures includes, as was true during the LAC review, the failure to properly investigate allegations and determine what occurred. Other, remaining problems include the ongoing failure to identify misconduct and hold staff accountable, and the failure to issue appropriate discipline when misconduct was uncovered. When those consistent findings—approximately half of all cases at LAC and KVSP during one quarter—are projected over CDCR’s entire accountability system, the number represents accountability failures in hundreds of cases.

Critically, these findings demonstrate the importance of (1) CDCR making meaningful improvements to the investigative process, including retaining video footage for more than 90 days; and (2) CDCR ensuring that investigation reports are complete and unbiased and that relevant evidence is presented to Hiring Authorities in a manner that allows them to easily determine whether the alleged violation occurred.

As with the LAC review, Plaintiffs reviewed each case and placed each into one of five categories¹:

- **Category 1** (no evidence of misconduct) – The investigator established that misconduct did not occur or exhausted reasonable investigative avenues or the complaint was so general that it likely should not have been treated as a staff complaint (e.g., allegations that “staff are generally disrespectful” resulting from the quarterly interview process).
- **Category 2** (incomplete investigations) – The incompleteness of the investigation (e.g., failing to obtain available video evidence or to interview relevant witnesses) made it impossible to determine whether the alleged staff misconduct occurred.

¹ One case, KVSP-20046066, falls into Category 2 (incomplete investigation) and Category 4 (inappropriate discipline). The investigator failed to adequately investigate the allegations in the 602. Although not raised in the 602, the investigator noted multiple flagrant BWC violations by the subject, but the Hiring Authority failed to impose adequate discipline for the BWC violations.

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- **Category 3** (failure to sustain allegations) – The investigator provided enough evidence to the Hiring Authority to support sustaining an allegation of misconduct, but the Hiring Authority nevertheless failed to sustain the allegation.
- **Category 4** (failure to impose appropriate discipline) – The Hiring Authority sustained at least one allegation of staff misconduct, but imposed a penalty that was not appropriate for the misconduct and/or that was inconsistent with CDCR’s policies, including the Disciplinary Matrix.
- **Category 5** (staff properly held accountable) – The Hiring Authority sustained one or more allegations of misconduct and imposed appropriate and consistent discipline.

Plaintiffs’ analysis shows that in 17 of the 57 cases at issue,² or close to one third, investigators failed to conduct complete investigations (Category 2), including failing to retain relevant video or otherwise review relevant evidence to determine what occurred. These problems persist across both local inquiries and AIU investigations. The Hiring Authority also failed to either sustain demonstrated misconduct (Category 3) or issue adequate discipline (Category 4) in 9 cases. Thus, in 26 of 57 cases—close to half or over 45%—CDCR’s accountability system failed. In the attached spreadsheet, Plaintiffs provide detailed explanations for each case in Categories 2, 3, and 4.

In sum, Plaintiffs’ review of the KVSP cases reinforces what Plaintiffs showed in their review of LAC cases and what Plaintiffs repeatedly show in the quarterly reports: Defendants must take action to improve the quality of investigations, to preserve footage,

² Plaintiffs’ counsel identified 11 atypical cases in this sample that impact the data and cause the totals to appear misleading. All 11 cases arose from unspecified “internal audits” that identified potential disability violations based on a review of documentation and referred those failures for local inquiries. These cases are atypical because it is not common for these types of cases, which do not arise as part of the staff complaint process, to appear in quarterly productions. The cases are: 20055377, 20055378, 20060563, 20060565, 20060577, 20060642, 20061830, 20062005, 20062006, 20064394, 20064523. Nevertheless, Plaintiffs’ counsel included these cases in the totals reported above and included them, highlighted in yellow, in the attached spreadsheet. If these eleven cases are excluded from the sample, the total number of cases showing investigation failures is 26 out of 46 – or 56%, nearly identical to the failure rate identified at LAC.

Jennifer Neill
Tamiya Davis
December 10, 2024
Page 4

and to improve disciplinary decision making in order to ensure compliance with the Court's orders and the Remedial Plans.

Sincerely,

ROSEN BIEN
GALVAN & GRUNFELD LLP

/s/ Penny Godbold

By: Penny Godbold
Of Counsel

Enclosure: KVSP Case Analysis Spreadsheet

Cc: Ed Swanson	Trace Maiorino
August Gugelmann	Sean Lodholz
Audrey Barron	Olena Likhachova
Patricia Ferguson	Sharon Garske
Ramon Ruiz	Amarik Singh
Chor Thao	Ursula Stuter
Co-counsel	

EXHIBIT B

State of California

Department of Corrections and Rehabilitation

Memorandum

Date: November 4, 2024

To: See Distribution List

Subject: **INTERIM ACCESS TO ASSISTIVE DEVICES FOR INCARCERATED PERSONS WITH A VISION IMPAIRMENT**

This memorandum provides direction to DPV (permanent vision impairment) designated institutions on interim access to assistive devices (e.g., electronic magnifiers, Americans with Disabilities Act [ADA] laptops, etc.) for incarcerated persons with a vision code who are either (1) pending an individualized assessment by the vision specialist or (2) pending receipt of a device recommended by the vision specialist.

Effective the date of this memorandum, incarcerated persons with a vision code may request access to additional assistive devices via the reasonable accommodation process. DPV-designated institutions shall develop a plan to ensure incarcerated people with a vision code, who are either awaiting their individualized assessment by the vision specialist or are pending receipt of the recommended device following assessment, are able to access to assistive devices through their ADA office. Access shall be allowed within the housing units (to include restricted housing units, and specialized bed units as needed) for in-cell use as well as in program areas or transports to same day appointments . The incarcerated person will be able to check out the device, including for overnight use, and shall be allowed additional time to use the device in connection with any pending legal proceedings, to include Board of Parole Hearings preparation.

The ADA Office will utilize the attached inventory sheet for this equipment and will ensure the assistive device is inspected upon return from any incarcerated person (or more frequently if needed), to ensure there is no damage or alteration to the equipment. If the assistive device is altered, damaged, misused, or destroyed, the ADA Office staff shall determine if the alteration, damage, misuse, to or destruction of the device was intentional or unintentional based on the circumstances (to include an interview with the incarcerated person, documented on a CDC Form 128B). If it is deemed intentional, the ADA Coordinator will determine the best course of action (i.e., limit access to the assistive device or provide an alternate reasonable accommodation). The attached check-in/check-out tracking sheet shall be completed by the ADA Office staff.

PROCUREMENT AND TRAINING FOR THE ASSISTIVE DEVICES

The Class Action Management Unit (CAMU) has procured the initial order of the assistive devices and will provide them to the ADA Offices at each DPV institution. Replacement or procurement additional device orders will be the responsibility of each institution. When ordering additional or replacements, all institutions shall order the same model for consistency ([Electronic Device Information and Training](#)); however, the choice of vendor is at the discretion of the institution, consistent with current established procurement policies.

See Distribution List

Page 2

Instruction guides for the devices are available on the CAMU SharePoint ([Electronic Device Information and Training](#)) for both staff and incarcerated persons. The ADA Office staff shall ensure all incarcerated person(s) authorized to utilize the assistive devices available as interim accommodations are provided training on the proper use and care of the assistive device(s). A CDC Form 128B information chrono documenting assistive device training shall be completed and forwarded to Case Records for scanning into the Electronic Records Management System.

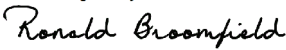
The ADA Coordinator shall communicate this information regarding vision coded incarcerated persons' access to additional assistive devices to the local Inmate Advisory Council and by institutional bulletins/notices located within housing units.

All DPV-designated institutions shall update their Disability Placement Program (DPP) Local Operating Procedures (LOP) to reflect the direction included in this memorandum and provide a copy of the DPP LOP to their respective Mission Associate Director within 90 days of the release date of this memorandum. The LOP must clearly articulate the process for inventorying, tracking, and inspecting the electronic vision devices. The revision may be incorporated as an addendum to be included in the next scheduled revision of the LOP.

Wardens, or their designee, at all DPV-designated institutions shall ensure all staff are provided access to the updated LOP (e.g., an institutional share folder) to ensure awareness of this new process. The ADA Office staff shall conduct in-person training with all ADA staff that includes a review of the policy and the updated LOP within 30 days of this memorandum.

If you have any local institution questions, please contact your local ADA Office.

If you have any headquarters level questions, please contact Jillian Hernandez, Captain, CAMU, at (916) 628-9632 or Jillian.Hernandez@cdcr.ca.gov.

DocuSigned by:

499F547FE65C411...

RON BROOMFIELD

Director

Division of Adult Institutions

See Distribution List

Interim Access to Assistive Devices for Incarcerated Persons with a Vision Impairment

Page 3

DISTRIBUTION LIST:

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Dan Cueva, Warden, California Medical Facility (CMF)

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Rob St. Andre, Warden, High Desert State Prison (HDSP)

Leanna Lundy, Warden, California State Prison, Los Angeles County (LAC)

Patrick Covello, Warden, Mule Creek State Prison (MCSP)

Kevin Hixon, Warden, North Kern State Prison (NKSP)

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Bobby Wheeler, ADA Coordinator, HDSP

Michelle Wofford, ADA Coordinator, LAC

Eric Pedersen, ADA Coordinator, MCSP

Adrian Gonzales, ADA Coordinator (A), NKSP

Philip Bracamonte, ADA Coordinator, RJD

Allen Iversen, ADA Coordinator (A), SATF

cc: Joseph Bick, M.D.

Joseph (Jason) Williams

Jennifer Benavidez

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Antronne Scotland

Dawn Lorey

Lourdes White

Jillian Hernandez

Darnell Mebane

Ava Lau-Silveira

Kristina Davis

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CAMU Field Correctional Counselor IIs

EXHIBIT C



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Rita Lomio
Donald Specter

BY EMAIL ONLY

April 5, 2024

Chor Thao
CDCR Office of Legal Affairs

Brianne Burkart
CCHCS Office of Legal Affairs

RE: *Armstrong v. Newsom*
Request for Information re: Individualized Assessments of Blind and Low-Vision Class Members

Dear Chor and Brianne:

We write to request that Defendants produce information regarding Defendants' individualized assessments of blind and low-vision class members. The information request below contains two categories: (1) CDCR/CCHCS information, and (2) class member information.

CDCR/CCHCS Information		
Request No.	Information Requested	Proposed Production Timeline
1	Any and all written guidance or instructions that Defendants have provided to Defendants' vision consultants (e.g. Western University) regarding individualized assessments of blind and low-vision incarcerated people.	No later than April 19, 2024.
2	Any and all contracts or other agreements that CDCR or CCHCS has executed with Western University or other parties regarding (a) individualized assessments or (b) training on assistive devices to blind and low-vision class members.	No later than April 19, 2024

Board of Directors

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Claire McDonnell • Ruth Morgan • Adrienne Yandell

Chor Thao and Brianne Burkart

Re: Request for Information re: Individualized Assessments of Blind and Low-Vision Class Members

Page 2

Class Member Information		
Request No.	Information Requested	Proposed Production Timeline
3	An up-to-date spreadsheet identifying all class members who have undergone or refused an individualized visual accommodations assessment. The spreadsheet should include the following information: name of class member, CDCR #, date of assessment, location of scheduled assessment.	Biweekly (twice a month).
4	For each class member who undergoes an individualized assessment, all records of the vision consultants arising from the assessment, including but not limited to progress notes and recommendations.	No later than 14 days following Defendants' receipt of these records from vision consultants.
5	For each class member who undergoes an individualized assessment, all post-assessment documentation by CCHCS/CDCR of Defendants' determination of the specific accessible formats needed by the class member.	No later than 14 days following the date of such documentation.
6	For each class member who undergoes an individualized assessment, all post-assessment documentation by CCHCS/CDCR of Defendants' approval or denial, purchase, and issuance of specific assistive devices to the class member.	No later than 14 days following the date of such documentation.
7	For each class member who undergoes an individualized assessment, (a) all documentation setting forth an approved plan or schedule for the class member's training on assistive devices, and (b) all CDCR- or CCHCS-generated documentation—including documentation generated by a third-party contractor—arising from assistive device training sessions.	For (a), no later than 14 days following approval of the training plan or schedule. For (b), no later than 14 days following the date of each training session.

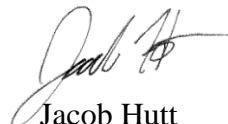
Chor Thao and Brianne Burkart

Re: Request for Information re: Individualized Assessments of Blind and Low-Vision Class Members

Page 3

Please let me know if you have any questions.

Sincerely,



Jacob Hutt
Staff Attorney

cc: Ed Swanson, Audrey Barron (Court Expert)
Co-counsel
Patricia Ferguson, Tamiya Davis, Nicholas Meyer, Ramon Ruiz, Ava Lau-Silviera, Ursula Stuter,
OLAArmstrongCAT (OLA)
Sharon Garske, Trace Maiorino, Sean Lodholz, Olena Likhachova, Anne Kammer, Gurpreet
Sandhu (OAG)
Mona Houston, Lourdes White, Jillian Hernandez, Cory Lo, CDCR CAMU Mailbox (DAI)
Brianne Burkart (CCHCS Legal)
Diana Toche, Joseph Bick, John Dovey, Robin Hart, Joseph (Jason) Williams, Cathy Jefferson,
Jason Anderson, Dawn Lorey, Jane Moses, Joshua (Jay) Leon Guerrero, Aaron Perez, CCHCS
Accountability (CCHCS)
Lois Welch, Steven Faris (OACC)

EXHIBIT D

OFFICE OF LEGAL AFFAIRS

Jennifer Neill
General Counsel
P.O. Box 942883
Sacramento, CA 94283-0001



November 14, 2024

VIA EMAIL ONLY

Jacob Hutt
Prison Law Office
jacob@prisonlaw.com

RE: *ARMSTRONG V. NEWSOM*: THIRD RESPONSE RE: REQUEST FOR INFORMATION RE: INDIVIDUALIZED ASSESSMENTS OF BLIND AND LOW-VISION CLASS MEMBERS

Dear Jacob:

Please see responses to your email dated October, 29, 2024, below.

REQUEST #2: Any and all contracts or other agreements that CDCR or CCHCS has executed with Western University or other parties regarding (a) individualized assessments or (b) training on assistive devices to blind and low-vision class members. I believe we are still waiting on a drafted stipulated agreement from Defendants, which the AG's office was preparing. Please send this over as soon as possible.

RESPONSE: Defendants have identified the following three contracts as responsive to your request: (1) Agreement No. 22-00101 dated May 18, 2023; (2) Agreement No. 22-00175 dated July 18, 2023; and (3) Agreement No. 13-00201-26 dated April 29, 2024.

1. Agreement No. 22-00101

Attached is a copy of Agreement No. 22-00101, except the payment rate sheet (Exhibit B-2). (Attachment A.) Exhibit B-2 to Agreement No. 22-00101 is confidential and is not subject to public inspection until May 18, 2027. (See Gov. Code, § 7926.215(c).) This exhibit is not relevant to whether Defendants' guidelines, plans, policies, procedures, and evaluations comply with the Americans with Disabilities Act (ADA) or Rehabilitation Act (RA); therefore, Defendants do not agree to produce this document.

2. Agreement No. 22-00175

Attached is a copy of Agreement No. 22-00175, except the payment rate sheet (Exhibit B-1). (Attachment B.) Exhibit B-1 to Agreement No. 22-00175 is confidential and is not subject to public inspection until July 18, 2027. (See Gov. Code, § 7926.215(c).) This exhibit is not relevant to whether Defendants' guidelines, plans, policies, procedures, and evaluations comply with the

Addressee

Page 2

Americans with Disabilities Act (ADA) or Rehabilitation Act (RA); therefore, Defendants do not agree to produce this document.

3. Agreement No. 13-00201-26

The contents of Agreement No. 13-00201-26 are confidential and not subject to public inspection until April 29, 2025. (See Gov. Code, § 7926.215(b)(1).) Additionally, the portion of this contract containing the rates of payment is confidential and not subject to public inspection until April 29, 2028. (See Gov. Code, § 7926.215(c).)

Despite the confidential nature of this agreement, Defendants will produce redacted copies of STD 213A form (Standard Agreement – Amendment) and Exhibit A-1 (Service Specifications) for Agreement Number 13-00201-26 subject to a stipulated protective order. (See Attachment C.) Defendants will redact the maximum amount of the agreement in section 3 of the STD 213A (Standard Agreement – Amendment) form and will redact information regarding services unrelated to vision assessments or training on assistive devices to blind and low-vision class members contained in section 4 of this form. Defendants will also redact the contents of Exhibit A-1 (Service Specifications), except Section 2 titled “Optometry,” because those contents are unrelated to individualized assessment or training on assistive devices to blind and low-vision *Armstrong* class members.

Defendants will produce redacted copies of the STD 213A form (Standard Agreement – Amendment) and Exhibit A-1 (Service Specifications) for Agreement Number 13-00201-26 to Plaintiffs’ counsel following entry of the stipulated protective order.

REQUEST #3: Regarding the final column of these rosters, can you please provide an update on Defendants' efforts to (1) contract with additional providers across the state to facilitate individualized assessments and (2) coordinate on-site individualized assessments, so that class members--including those with severe medical conditions and disabilities--do not have to travel extremely long distances to go to Western University's physical offices?

RESPONSE: Regarding (1), on April 29, 2024, Defendants contracted with an additional provider to facilitate, in part, individualized assessments of vision-impaired class members across the state. This contract is referenced in Defendants’ response to Plaintiffs’ Request #2 above as Agreement No. 13-00201-26. As to (2), Defendants have revised the last column of the roster to reflect the location of the scheduled assessments and will begin to include this information in the final column of the rosters moving forward. (See Attachment D.)

REQUEST #6: We are still awaiting a response from Defendants about how they will produce "all post-assessment documentation by CCHCS/CDCCR of Defendants' approval or denial, purchase, and issuance of specific assistive devices to the class member." See June 18th email below. We first made this information request nearly seven months ago (see April 5th letter, Request #6), and Defendants have still not provided us with relevant information. Without this information, we are

Addressee
Page 3

unable to adequately monitor whether and when blind and low-vision class members have received their recommended assistive devices.

RESPONSE: There are no documents responsive to Plaintiffs' request for post-assessment documentation of CDCR/CCHCS's approval or denial of assistive devices recommended by the vision specialist following vision-impaired class members' individualized assessments. Defendants will not agree to ongoing production of documentation related to the purchase of specific assistive devices for vision-impaired class members because CDCR does not track this information in the regular course of business in a centralized location statewide, rendering this request unduly burdensome. Plaintiffs can obtain this documentation through the regular document production process by requesting relevant documents either prior to or following tours of an institution.

Additionally, Defendants disagree with your assertion that no relevant information has been provided. As previously explained to Plaintiffs' counsel, the issuance of the assistive devices to class members is documented in a CDC Form 128-B, which class members receive at the time of the issuance of their assistive device(s). (See June 7, 2024, letter from Chor Thao to Jacob Hutt at 2.) Plaintiffs' counsel can obtain copies of these forms either directly from their clients, or by requesting the forms through the regular document production process, either before or after tours of an institution. (See *id.*) The process for obtaining the information you have requested has not changed.

REQUEST #7: In our June 18th email, we wrote: "Plaintiffs have access via EHRS to Western U's initial, individual recommendations for training class members on the use of assistive devices. It is unclear, however, whether 'all CDCR- or CCHCS-generated documentation—including documentation generated by a third-party contractor—arising from assistive device training sessions,' will be documented in EHRS. Please confirm whether and how Plaintiffs can access this information in EHRS, and if we cannot, explain how Defendants will produce this information to Plaintiffs." We first made this information request nearly seven months ago (see April 5th letter, Request #7), and Defendants have still not provided us with relevant information. Without this information, we are unable to adequately monitor whether and how blind and low-vision class members are receiving training on how to use their assistive devices.

RESPONSE: Defendants disagree with your assertion that no relevant information regarding CDCR- or CCHCS-generated documentation of class member training on the use of assistive devices has been provided to Plaintiffs' counsel to date. As explained in Defendants' June 7, 2024, second response letter, upon receipt of their training on the use of assistive devices, class members sign a copy of the CDC Form 128-B acknowledging that they understand when and where they can use the device(s), how to use the device(s) independently, and that they can request additional training if needed. (See *id.* at 3.) Plaintiffs' counsel can obtain copies of these forms either directly from their clients, or by requesting the forms through the regular document production process by requesting relevant documents either prior to or following tours of an institution.

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Addressee

Page 4

REQUEST #7a: We ask that Defendants promptly provide us with documentation laying out a training plan or schedule for accessible laptop education for Mr. and all documentation arising from his training sessions.

RESPONSE: CDCR will provide a response to this request via the regular advocacy process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ava' followed by a stylized surname.

Ava Lau-Silveira
Attorney